

Limitation on residence violates right to freedom

There are many incidents where the prosecutor imposes residence limitation on the accused, including restriction to exit the country, without conducting proper examination. The Control Yuan launches an investigation to find out whether the use of residence limitation violates due process and involves the abuse of the power. (Case no. 1010800235).

The Code of Criminal Procedure specifies that prosecutors may impose limitation on residence of the accused in the event that he is apprehended, arrested; summoned, surrenders himself to the authorities; has been interrogated by the prosecutor; or is strongly suspected of having committed an offense but it is considered that application for detention is not necessary. The limitation on residence is a compulsory measure that requires the accused to reside in certain places and denies him the right to migration as a way to ensure him stands trial or be present as required. The limitation on residence should not undermine the freedom of migration or travel under normal circumstances. The length of the residence limitation is determined by how the lawsuit progresses and how the sentence is carried out. The limitation takes effect on the day the verdict is announced or delivered to the accused. The current law does not specify whether the previously imposed limitation should be reconsidered after the accused is prosecuted. In the case of deferred or non-prosecution, the prosecutor should immediately reconsider the previously imposed limitation and notify the immigration agency and the coast guard of its decision, which regrettably is not always the case. As such the accused were often deprived of the right to freedom for extended period of time.

The CY's investigation exposed problems in the current practice and found that the Judicial Yuan and the Ministry of Justice failed to specify the frequency and effective period of the limitation on residence, resulting in excessive harm to person's right to migration. At the CY's request, the Judicial Yuan revised Articles 1 and 121 of the Code of Criminal Procedure that allow the accused and his legal representative or defender to petition the court to rescind the limitation on residence. The revision was submitted to the Legislative Yuan for review and approval. The Ministry of Justice issued letters requesting all prosecutors' office to notify the National Immigration Agency and Coast Guard Administration of lifting the restriction to travel by air and sea so as to protect the rights of the accused.